IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Contempt Petition No.395 of 2006

Anil D. Palli. .. .. Petitioner
v/s.
Jagidish R. Chinni & ors. .. .. Respondents
(Res.Nos.1 to 3-Contemnors)

Mr.Suresh S. Shah for Petitioner.

Mr.D.A. Patil, AGP for the Respondent No.4.

Mr.V.B.Naik with Mr.I.M.Khairodi for the Respondent Nos.1 to 3.

CORAM : ABHAY S. OKA, J.

DATED : 23rd April, 2007

P.C. :

1. Submissions of the learned Counsel appearing for parties were heard on the last date. The allegation in the Contempt Petition is that the Respondents have committed a breach of the directions contained in order dated 18th April 2006 passed by this Court in Writ Petition No.2576 of 2006. The 1st Respondent was a party to Writ Petition No.2576 of 2006. In fact, he was the 1st Respondent therein. It is alleged that breach was committed of directions contained in Clause-4 of order dated 18th April 2006. Clause-4 reads thus:-

> " 4. Having regard to the above and having further regard to the fact that the election programme has already reached stage of casting votes, end of

justice would be met by modifying the impugned order to the extent hereinbelow.

A. The Petitioner no.1 being President of the petitioner no.3 Trust, will hold and conduct elections in accordance with programme, published on 8-4-2006 and will carry on the programme from the stage of casting votes.

B. The said elections will be conducted by a Secret Ballot and the petitioner no.1 to ensure to conduct elections in fair and transparent manner.

C. Shri Gaikwad M.V., who has been appointed by the Ld. Asst. Charity Commissioner Solapur to hold and conduct elections will now supervise the entire elections of the Petitioner no.3 Trust."

2. The allegation of contempt is based on the Change Report filed by the 1st Respondent claiming that he has been elected as the President of the Trust. Reliance has been placed on the Change Report and a copy of resolution annexed to the Change Report. According to the Petitioner, the 1st Respondent claims to have been elected as the President and the 2nd and 3rd Respondents have respectively proposed and seconded his nomination. It is contended that as per the order passed by this Court on 18th April 2006, the election

was to be conducted by the 1st Petitioner in the said Petition under the supervision of Shri M.V. Gaikwad, who was appointed by the learned Assistant Charity Commissioner to hold and conduct the election. It is also pointed out that order of this Court provides that election will be conducted by a secrete ballot. It is contended in the Petition that the 1st Respondent is claiming that he has been elected in the election which was conducted in breach of order passed by this Court on 18th April 2006.

3. An Affidavit-in-reply has been filed by the 1st Respondent. The 2nd and 3rd Respondents have also filed different Affidavits. To Affidavit-in-reply, the 1st Respondent has annexed by way of Exhibit-D a copy of the resolution allegedly passed in the meeting. Reliance has been placed on Report submitted by Shri M.V. Gaikwad, which is also annexed to the Affidavit-in-reply.

4. On plain reading of order dated 18th April 2006, it is obvious that the direction was issued against the 1st Petitioner in the said Petition. The dispute which is raised in the Contempt Petition is essentially about the legality and validity of the alleged election. In this Contempt Petition, the 1st Petitioner in the Writ Petition against whom the order was passed, is not a contemnor. The issue whether the 1st Respondent or any one else was elected as the President and the issue regarding legality and the

validity of the election will have to be decided in the Change Report proceedings or any other proceedings taken out in accordance with law. As of today, even prima facie, it cannot be said that any of the parties have committed a deliberate or wilful breach of the order passed by this Court on 18th April 2006. Therefore, no case is made out for proceeding under the Contempt of Courts Act, 1971.

5. In the circumstances, the notice issued against the Respondents is discharged. The Contempt Petition is disposed of.

(ABHAY S. OKA, J.)